HONOURABLE SRI G.S.SINGHVI

THE CHIEF JUSTICE

AND

HONOURABLE SRI JUSTICE

G.BHAVANI PRASAD

-

WRIT APPEAL No. 2404 OF 2005

-

Between:

Panchadarla Satyam S/o late Bangaraiah

… Appellant

And

The Government of A.P.

represented by its Principal

Secretary, Municipal Administration,

Secretariat, Hyderabad and another.

… Respondents

::JUDGMENT::

Counsel for appellant : Sri T.S.Venkataramana

Counsel for respondent No.1 : Government Pleader

for Municipal Administration.

Counsel for respondent No.2 : Sri S.Nageswara Reddy

24th January, 2006

Per G.S.Singhvi, C.J.

This appeal is directed against order dated 1.110.2005 passed by the learned Single Judge whereby he rejected the appellant's claim for grant of compensation in lieu of the injuries caused due to bullet fired by a constable engaged by

Vizianagaram Municipality for killing of pigs.

The appellant is a labourer. On 7-1-2005 he is said to have gone to Balaji Flour Mill in the evening for the purpose of delivering gunny bags. While he was unloading the stock of gunny bags, the appellant received bullet injury below the right knee. Civil Assistant Surgeon, District Hospital, Vizianagaram removed bullet by operating the petitioner. As a result of this, the appellant was immobilized. He filed writ petition under Article 226 of the Constitution of India for award of compensation by alleging that the injury has been caused due to negligence on the part of the police personnel summoned by the municipal authorities for killing the pigs.

The learned Single Judge dismissed the writ petition by observing that the contentious issue relating to the alleged negligence of the police personnel who had fired the bullet to kill a pig cannot be decided in proceedings under Article 226 of the Constitution of India.

On 12.12.2005, notice of this appeal was issued to the respondents and liberty was given to them to file counter affidavit because the writ petition had been disposed of without issuing formal notice.

In furtherance of the liberty given by the court,
Sri D.John Samson, Commissioner, Vizianagaram Municipality has filed counter affidavit dated 15.1.2006. In paragraphs 6 and 7, Sri D.John has detailed with the facts relating to incident in which the petitioner suffered injury on account of the bullet fired by the constable engaged by the municipal authorities for killing the stray pigs. For the sake of convenient reference, these paragraphs are reproduced below:

> "6. It is further submitted that on 7.1.2005 the team went to V.T.Agraharam area near Balaji Roller Flour Mill, which is one of the harboring places for pigs and the surrounding area is a vulnerable slum having thickly populated habitat. The Municipal Health Officer along with Sanitary Inspectors and the police personnel drafted for duty found many pigs near the area covered with thick bushes and feeding on the waste. The Municipal Health Officer and other staff have informed the people in the surrounding areas of the operation to vacate the area, which include the Balaji Roller Flour Mill, which was outside the cordoned area. The labourers who were near the Flour Mill were abundantly cautioned about the danger and informed to vacate the area and not to stay within the firing range. All the people have vacated the area including the petitioner who might have waiting near the floor mill area out of curiosity. The staff members after ensuring that the area is vacated started firing on the pigs. As the firing started the pigs ran in many directions and the

staff flowed them shooting accurately as the police personnel are well trained and experienced shooters. However one bullet released from a constable's gun contacted a hared metal object like stone or iron changed its directions and lost is power of penetration. All of a sudden a loud cry is heard from the petitioner who has strayed into the cordoned area out of curiosity to look at the shooting of pigs. On hearing the voice the staff members stopped shooting, approached the petitioner on whom a small cut is seen near the right knee of his leg. Immediately the Municipal Health Officer in his own vehicle shifted the petitioner to the District Head Quarters Hospital, Vizianagaram for treatment duly informed the District Collector, Municipal Chairperson and the Commissioner.

7. It is further submitted that the Medical Officer at the District Head Quarters Hospital after examining the patient/petitioner has opined to shit to King George Hospital, Visakhapatnam for a surgery to remove the hidden object below the right knee as there are no proper facilities at Vizianagaram Hospital. Immediately the Commissioner and other Municipal staff informed the relatives of the petitioner and with their consent shifted the petitioner to King George Hospital, Visakhapatnam with police and Medical escort at the expenses of the Municipality. The Hospital expenses at Visakhapatnam boarding and lodging expenses for his family in Visakhapatnam drugs expenses for pre and post operation and other miscellaneous expenses amounting to Rs.7000/- have all been met by the staff on humanitarian ground by their own contribution. Apart from these, the Mandal Revenue Officer, Vizianagaram has also provided ration from the PDS to the petitioner family for a month on the instructions of the Collector. The Municipal Chairperson was also benevolent and sanctioned compensation to the petitioner for an amount of Rs.5000/- on behalf of the Municipality."

Learned counsel for the petitioner vehemently argued that the version of the accident set out in the affidavit of D.John does not represent the true state of affairs and, as a matter of fact, the petitioner had suffered due to gross negligence on the part of the police constable, who had fired for killing the pig.

We have considered the submissions of the learned counsel, but have not felt impressed. Rather, we agree with the learned Single Judge that in exercise of power under Article 226 of the Constitution of India, this court cannot adjudicate on the contentious issues of fact, which can be properly decided after giving opportunity to the parties to produce oral as well as documentary evidence in respect of their respective cases. The question whether the police constable was negligent in firing at the pig or the petitioner had ventured in the cordoned area and on that account he suffered injury of the bullet which ricocheted from a metal object can be appropriately decided by civil court where the petitioner as well as the authority of

the municipality will have opportunity to adduce evidence. The material placed before us is too scanty to warrant an exercise by this Court for determination of a highly contentious issue of fact.

For the reason mentioned above, the appeal is dismissed leaving the appellant free to avail appropriate legal remedy by filing civil suit or otherwise.

G.S.SINGHVI, C.J.

24.1.2006.

G.BHAVANI PRASAD, J.

VR / svs